

JUSTICE and HOME AFFAIRS COUNCIL

Thursday 8 and Friday 9 October in Luxembourg

The meeting will be chaired by **Jean ASSELBORN**, Luxembourg Minister of Immigration and Asylum, **Etienne SCHNEIDER**, Luxembourg Minister of Internal Security and **Félix BRAZ**, Luxembourg Minister of Justice.

On **Thursday**, starting at 9.30, **home affairs** ministers will discuss several issues related to migration. They will have a discussion on the **future management of the EU external borders** and of the **return policy**. On the latter the Council is also expected to adopt conclusions.

Ministers will be briefed on the latest developments regarding the **relocation** of 40 000 persons in need of international protection, following the decision adopted on 14 September.

Under the **visa policy**, ministers will hold a policy debate and will take stock of work regarding a regulation on the Union code on visas (recast) and a regulation establishing a touring visa. They are expected to agree on some guidelines for the continuation of the work at technical level.

Ministers will hear a progress report on several measures proposed by the Commission on 9 September 2015 to respond to the current refugee crisis.

Over lunch, they will discuss the link between migration and development, in particular in the run-up to the Valetta Summit.

Regarding **counterterrorism**, ministers are expected to adopt conclusions with a view to stepping up measures against **trafficking in firearms**. They will also be briefed about the implementation of measures regarding the fight against terrorism as a follow up to the statement of 12 February by the members of the European Council. The Presidency will also inform ministers on recent developments on **railway safety**.

Ministers will also take note of a progress report on a directive on the use of **passenger name record data (PNR)** for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

On **Friday**, starting at 10.00, **Justice** ministers will try to reach a general approach on the draft directive for the protection of personal data processed for law enforcement purposes.

They will also attempt to reach a partial general approach on a regulation establishing a **European Public Prosecutor's Office**.

The Council will take note of a progress report on the accession of the Union to the European **Convention for the protection of human rights** and fundamental freedoms.

¹ This note has been drawn up under the responsibility of the press office.

It will hold a general debate on the migration crisis, focusing on aspects of **judicial cooperation and the fight against xenophobia**.

A **conference on the Eastern Mediterranean - Western Balkans route** will take place in the margins of the Justice and Home Affairs Council, on Thursday 8 October 2015 at 18.00. Both Ministers of Foreign Affairs and Ministers of Interior are expected to attend.

Press conferences:

- **Home affairs Council** (*Thursday, before lunch +/- 13.15 and at the end of the meeting +/- 17.30*)
- **Eastern Mediterranean - Western Balkans route conference** (*Thursday, after family photo +/- 19.40*)
- **Justice Council** (*Friday, after lunch +/- 15.00*)

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Press conferences and public events by video streaming: <http://video.consilium.europa.eu>

Video coverage in broadcast quality (MPEG4) and photo gallery on: www.eucouncil.tv

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HOME AFFAIRS

Migration

The situation of migration phenomena outside and inside the European Union has recently taken unprecedented proportions.

Home affairs ministers are expected to discuss the future management of the EU external borders and of the return policy. They will also follow up on some of the measures proposed by the Commission to respond to the current refugee crisis and to prepare for future challenges.

a) The future management of the EU external borders

According to Frontex analysis, more than 500 000 migrants were detected trying to cross the external borders of the member states of the European Union illegally between January and August 2015, half of them using the Eastern Mediterranean route, with 156 000 in August alone, the highest monthly number so far.

The European Agenda on Security and the European Agenda on Migration mentioned the need for a high level of common standards for border management. On 25 and 26 June 2015, the European Council called for wider efforts in resolving the migrant crisis, including through the reinforcement of the management of borders to better contain the growing flows of illegal migration. Furthermore, on 23 September 2015, the European Council stressed the need to tackle the dramatic situation at Europe's external borders as well as to strengthen the controls at those borders, notably through additional resources for Frontex, EASO and Europol and with human resources and technical contributions from Member States.

The current situation requires immediate action as well as a sustainable long-term approach. To this end, ministers will be invited to have a discussion on the future management of the EU external borders, such as the evolving collective responsibility of Frontex and the use of new technologies.

b) The future of the return policy

The Council will hear a presentation by the Commission on its recent proposals to improve the return policies of member states: an EU Action Plan on Return and a common Return Handbook.

The communication establishing an EU Action Plan on Return defines the immediate and mid-term measures to be taken by Member States to enhance voluntary return, to strengthen the implementation of the Return Directive, to improve information sharing, to strengthen the role and mandate of Frontex in return operations, and to create an integrated system of return management.

The recommendation establishing a common Return Handbook offers national competent authorities practical instructions when carrying out returns of those migrants who do not have the right to stay in the European Union.

The Council will then have a general discussion on the future of the return policy and its expected to adopt a set of conclusions.

c) Relocation

Ministers will be briefed by the European Commission and the Italian and Greek delegations on the implementation of the decision of the Council adopted on 14 September regarding the relocation of 40 000 persons in need of international protection.

d) Visa policy

The Council is expected to agree on some guidelines for the continuation of the work on the "Visa Package" presented by the Commission on 2 April 2014.

The "Visa Package" contains the proposal for the recast of the regulation on the Union Code on Visas (the "Visa Code") and the proposal for a regulation aiming at establishing a touring visa.

The draft Regulation recasting the Visa Code takes into account the increased political emphasis given to the positive impact of the visa policy on the wider European Union economy and, in particular, on tourism. Its aim is to ensure greater coherence with the growth objectives of the Europe 2020 strategy and contribute to generating economic growth while preserving coherence with other Union policies, such as external relations, trade, education, culture and tourism.

In order to achieve this, the proposal contains some amendments which facilitate travel opportunities for legitimate travellers and simplify the legal framework. It also establishes new categories of visa applicants who would benefit from these procedural facilitations.

As regards the second proposal, it establishes a new type of visa called "touring visa". It aims at filling a legal gap by introducing a new authorisation for persons who have a legitimate interest or need to stay longer than 90 days in the Schengen area, but not long enough in any member state to take up residence there. It would therefore provide a solution for certain categories of persons who have such legitimate interest or need such as live performers, sportspersons and their crews who tour from one member state to another. The length of authorised stay within the Schengen area would go up to one year, with the possibility of extension for another year, but would be limited to 90 days in any 180-day period for each member state.

e) Follow up to the European Commission proposals on 9 September 2015

The Council will be briefed by the Presidency on the progress of discussions on a regulation establishing an EU common list of safe countries of origin and on a regulation establishing an emergency relocation mechanism and amending the Dublin regulation.

For more information:

[Council website: EU response to migratory pressures](#)

[Relocation of 40 000 refugees from Greece and Italy agreed by Council](#)

[European Commission proposals](#)

EU PNR Directive

The Presidency will inform the Council on the work progress on the proposal for a directive on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

The draft directive aims to regulate the transfer from the airlines to the member states of PNR data of passengers of international flights, as well as the processing of this data by the competent authorities. The directive establishes that PNR data collected may only be processed for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

In April 2012 the Justice and Home Affairs Council agreed on a general approach regarding the draft directive.

The Council and the European Council have regularly highlighted the urgency of finalising this directive, in light of the growing threat posed by foreign fighters.

On 15 July 2015, the committee in charge of the proposal at the European Parliament adopted a revised report on the directive and a mandate to open negotiations with the Council.

Negotiations between the institutions on the draft directive are ongoing.

For more information:

[Council website: Regulating the use of passenger name record data](#)

Counter-terrorism

The Council is expected to adopt conclusions on strengthening measures to fight trafficking in firearms.

Ministers will also be briefed by the Presidency and the EU Counter-terrorism coordinator about the implementation of measures regarding counterterrorism, following the statement by EU leaders on 12 February 2015. They will also be briefed on recent developments on railway safety.

For more information:

[Council website: Response to foreign terrorist fighters and recent terrorist attacks in Europe](#)

Fight against international organised and serious crime

The Council will hear a presentation by Europol on the results of the large scale law enforcement operation which took place between the 4 May and 24 June 2015 (Operation Blue Amber).

Following this presentation, Ministers will be invited to held a policy debate on the member states role and input in the EU's fight against serious and organised crime, and in particular the setting of crime priorities and possibilities to effectively bring together resources at EU level.

During the joint action days between 4 May-24 June 2015 (Operation Blue Amber), raids and other interventions took place in hundreds of locations including airports, border-crossing points, ports and specific crime hot spots in towns and cities all of which had featured variously in Europol's Serious and Organised Crime Threat Assessment ([SOCTA](#)), criminal intelligence reports from EU member states and third countries and analytical products drawn from Europol's criminal databases.

Some preliminary results are:

- more than 500 suspected criminals arrested
- 2.8 tonnes of cocaine seized
- 390 vehicles confiscated
- nearly 1300 tonnes of stolen metal seized.

For more information:

[Europol website: Operation Blue Amber](#)

The Belgian delegation will also brief ministers about their concerns regarding the rising tensions and growing violent confrontation between outlaw motorcycle gangs, especially in the border region with the Netherlands and Germany.

JUSTICE

Data protection for police and judicial cooperation in criminal matters

The Council will try to agree its negotiating position on the draft data protection directive. The draft directive establishes rules for the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

The draft directive is part of the comprehensive data protection legislative package which was proposed by the Commission on 25 January 2012. The package comprises two legislative proposals: a general data protection [regulation](#), which is intended to replace the 1995 data protection directive² (former first pillar), and a [directive](#) which is intended to replace the 2008 data protection framework decision³ (DFPD) (former third pillar).

The proposed directive is aimed at ensuring a consistent and high level of data protection, enhancing mutual trust between police and judicial authorities of different member states and facilitating the free flow of data and co-operation between police and judicial authorities. The European Parliament is for the first time co-legislator with respect to the areas covered by this directive.

The proposed directive would apply to both, the cross-border transfer of personal data as well as the processing of personal data by the police and judiciary authorities at purely national level. By contrast, the DFPD has a limited scope of application and applies to cross-border data processing only. This has created difficulties for police and other competent authorities in the areas of judicial co-operation in criminal matters and police co-operation. They are not always able to easily distinguish between personal data that will remain purely domestic and personal data that might be used in cross-border exchanges.

European public prosecutor's office

The Council will discuss and try to provisionally agree on certain articles of the draft regulation establishing the European public prosecutor's office (EPPO).

The potential agreement is expected to cover articles 24-37 of the draft regulation. They establish rules notably for the conduct of cross-border investigations, for criminal prosecution at national courts and procedural rights of suspected and accused persons. Articles 34 and 36 on transactions and judicial control will for the time being be exempted of the agreement.

The Council will also be briefed by the presidency on the state of play on the articles on which more work is still needed to reach an agreement.

The proposed regulation is aimed at helping combat crimes against the EU's financial interests by introducing a European Public Prosecutor's Office with competence in that area. The legal basis and the rules for setting up the EPPO are laid down in article 86 of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation requires the unanimous support in the Council which adopts it after having obtained the consent of the European Parliament.

The Commission presented its [proposal](#) on 17 July 2013.

² Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23/11/1995](#))

³ Framework decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ([OJ L 350, 30/12/2008, p. 60](#))

EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

The Council will be briefed by the presidency on the state of play of the EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The Lisbon Treaty requires the accession of the EU to the ECHR. Art. 6 (2) of the TEU stipulates: "The EU shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms".

In June 2010 the Council adopted a negotiating mandate and negotiations have been ongoing since then. At the last negotiating session (3-5 April 2013) in Strasbourg, during the 5th meeting of the CDDH 47+1 group, an agreement at negotiators level was reached. Subsequently in July 2013 the Commission requested the Court of Justice of the European Union (CJEU) to give an opinion on the agreement's compatibility with the EU Treaties.

In an opinion delivered on 18 December 2014 the Court of Justice of the European Union concluded that the draft accession agreement is not compatible with EU law.

EU accession is a clear, specific mandatory requirement set up by the Lisbon Treaty. It will strengthen fundamental values and enhance consistency in the protection of fundamental rights throughout Europe. It will also enhance the credibility and accountability of the EU both internally and externally in terms of fundamental rights protection.

The accession process has to be pursued and there is a need for concrete follow-up action to the opinion of the CJEU. The Commission in its role as the EU negotiator is invited to come forward with a comprehensive analysis on the ways to address the issues raised by the opinion of the CJEU.

Migration crisis

The Council will discuss about judicial cooperation and the fight against xenophobia in the migration crisis. The discussion will take place on the basis of a presidency note outlining a number of possible priority actions in this field.

As regards judicial cooperation the presidency suggests a better use of the tools of Eurojust by the judicial authorities of the member states, a better cooperation between the judicial authorities of third countries and training. Concerning the fight against xenophobia the presidency proposes to improve the conditions for combating xenophobia, to cooperate with the internet providers to act against on-line hate speech and to protect the children's rights and best interests throughout the migratory and asylum chain, including any administrative and judicial proceedings.

MIXED COMMITTEE

The Council in the Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will discuss the following items:

On Thursday, home affairs ministers will have a discussion on the future management of the EU external borders, on the future of the return policy and on the "Visa package".

On Friday, justice ministers will discuss the draft directive for the protection of personal data processed for law enforcement purposes.

For background see items above.

HIGH LEVEL CONFERENCE EASTERN MEDITERRANEAN - WESTERN BALKANS ROUTE

The High Level Conference on the Eastern Mediterranean-Western Balkans route will take place in Luxembourg on 8 October with the aim of enhancing engagement among partners in order to increase solidarity with those who are bearing the brunt of refugee flows from Syria and to ensure an orderly management of refugee and migration flows along this route.

The conference will be held at ministerial level and will bring together the ministers for home affairs, ministers for foreign affairs and high level representatives with their counterparts from Turkey, Lebanon and Jordan, as well as from the Western Balkans (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo^{*4}). The associated countries, Switzerland, Norway, Liechtenstein and Iceland will also attend.

Representatives from UNHCR, International Organisation for Migration, World Food Program, and EU agencies Frontex, Europol and EASO will present the situation on the ground.

It will be co-chaired by Jean Asselborn, Luxembourg minister for Foreign and European Affairs, minister for Immigration and Asylum, and Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy, Vice-President of the Commission.

Recent events, with a massive increase in the numbers of migrants overwhelming reception capabilities of countries along the Eastern Mediterranean/Western Balkan route, clearly demonstrate the need for a determined, coordinated and coherent regional response. The present situation affects, inter alia, security, public order and creates social tension in countries of transit and final destination. It has huge human costs. It also feeds related organised crime. We are facing a common challenge and we need to respond collectively with solidarity and partnership.

The European Council on 25-26 June 2015 identified the need for a high-level conference to address the challenges of the Western Balkans route. At their informal meeting on 23 September 2015 the EU leaders tasked the institutions to ensure a speedy and solid preparation of the conference.

The discussion at the conference will focus on:

⁴ * This designation is without prejudice to position on status, and is in line with UN Security Council Resolution 1244/99 and the International Court of Justice Opinion on the Kosovo declaration of independence.

- increasing support to countries of first asylum hosting most Syrian refugees, notably Turkey, Jordan and Lebanon, in order to help them face the pressure;
- improving reception, registration and asylum processing capabilities in all affected transit countries to ensure protection is granted to those entitled to it and those who are not in need of international protection are returned;
- enhancing cooperation to fight organised crime responsible for migrant smuggling and trafficking in human beings;
- addressing root causes of forced displacement, namely considering ways to strengthen support to a political solution to the conflicts in Syria and Iraq and fighting extremist terrorism in Syria, Iraq and Afghanistan;
- discussing engagement with countries of origin of irregular migrants.

It is envisaged that the High Level Conference adopts a Declaration that will set out the main principles, goals and actions participants will jointly subscribe to, and will undertake, to ensure full protection for refugees, orderly management of borders and return of persons not entitled to international protection. The conference is part of a process. Implementation of its commitments will require active follow-up.

For more information:

[Council website: Eastern Mediterranean - Western Balkans route conference](#)